



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

JOHN A. LASOTA, JR.  
ATTORNEY GENERAL

July 28, 1978

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**ARIZONA ATTORNEY GENERAL**

Ms. Terry Murray  
Associate Planning Director  
Office of Economic Planning  
and Development  
1700 West Washington  
Phoenix, Arizona 85007

Re: 78-169 (R78-151)

Dear Ms. Murray:

This is in response to your letter of May 22, 1978 in which you asked whether the Governor with the consent of the Arizona Department of Transportation has the authority to apply for and receive Urban Mass Transportation Act § 9 grants. We conclude the Governor has such power:

A.R.S. § 41-101.01 provides:

The Governor, except as otherwise provided by law, is authorized to accept and expend any grants . . . received from the federal government or any agency thereof pursuant to [specified acts of Congress] and any other funds made available to the state through any federal statutes, and in receiving and expending such funds, the Governor shall be considered the agency of the State for all the purposes provided by this section.

Your letter suggests that A.R.S. § 28-108 (A) (9) may prohibit the Governor from being the applicant for UMTA funds. A.R.S. § 28-108 (A) (9) provides that the Director of the Department of Transportation shall:

Receive, allocate, control and disperse all funds designated for state Mass Transit programs by federal or state law, regulation or rules.

Does A.R.S. § 28-108 (A) (9) constitute an exception to gubernatorial authority granted in A.R.S. § 41-101.01? No, for we believe that on the particular facts cited to us, § 28-108 (A) (9) does not preclude the Governor from being the applicant for

and initial recipient of funds.

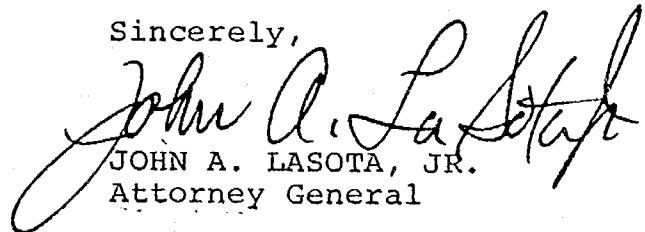
Several factors suggest this conclusion. The Director of the Department of Transportation will "receive, allocate, control and disperse" Mass Transportation funds. The objection that the Governor is also receiving the funds prior to their being passed on to Transportation seems minimal when the Director has consented to the arrangement.

Second, general gubernatorial power to accept federal funds under A.R.S. § 41-101.01 was authorized in 1968. Laws of 1968, Ch. 151, § 1. This section pre-dates the creation of the Department of Transportation and the specification of the Director's authority under § 28-108(A) (9). Had the Legislature intended § 28-108(A) (9) to forbid the exercise of gubernatorial power it would have said so.<sup>1</sup>

Finally, A.R.S. § 28-108(A) (14) provides the Director shall "[d]elegate such functions, duties or powers as he deems necessary to carry out the efficient operation of the department." Having given the Director authority to delegate his powers regarding Mass Transit funds under A.R.S. § 28-108(9), it is illogical to conclude the Legislature intended that the Director could not share his powers with his immediate superior (A.R.S. § 28-107).

For the above reasons we conclude the Governor may, with the consent of the Director of the Department of Transportation, apply for and receive Mass Transportation planning funds to be passed on to the Department of Transportation. The legal eligibility statement that you requested is attached.

Sincerely,



JOHN A. LASOTA, JR.  
Attorney General

JAL:jt  
Enc.

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1. A.R.S. § 28-112A authorizes the Department of Transportation to accept federal grants "for any transportation purpose." A.R.S. § 28-112C provides:

The provisions of this article shall not be construed to affect the authority of other agencies or boards of the state or political subdivisions from accepting, receiving or expending grants or other funds from the federal government or any agency thereof for any transportation purposes pursuant to other provisions of law or charter.



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July 27, 1978

Dee V. Jacobs, Regional Director  
Urban Mass Transportation  
Administration  
Two Embarcadero Center  
Suite 620  
San Francisco, California 94111

Dear Mr. Jacobs:

This is in response to your letter of June 22, 1978 in which you requested a legal eligibility statement for the Office of the Governor of the State of Arizona for receipt of UMTA funds. You suggested that the statement cover three areas of Arizona statutory authority:

1. Creation of applying body. Article III of the Arizona Constitution provides:

The powers of the government of the State of Arizona shall be divided into three separate departments, the Legislature, the Executive and the Judicial.

Article V, Section 1 provides:

The Executive Department shall consist of Governor . . .

2. Capacity to execute federal contracts.  
A.R.S. § 41-101.01 provides:

The Governor, except as otherwise provided by law, is authorized to accept and expend any grants, donations, aids, or other funds received from the federal government or any agency thereof pursuant to [specified federal statutes] and any other funds made available to the state through any federal statutes, and in receiving and expending such funds, the Governor shall be considered the agency of the state for all the purposes provided by this section.

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Phoenix, Arizona

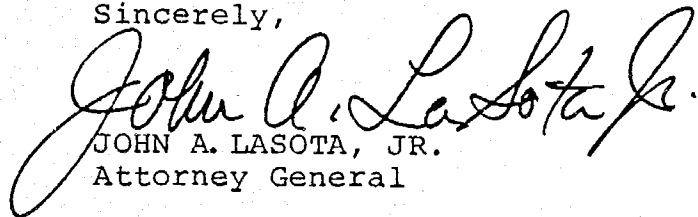
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See Also Atty. Gen. Op. 78-169 (enclosed).

3. Capacity to extend federal grant funds.  
A.R.S. § 41-101.01 quoted above.

We trust this complies with your requirements.  
Please let us know if we can provide additional assistance.

Sincerely,

  
JOHN A. LASOTA, JR.  
Attorney General

Enclosure

JAL:jt